

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

INTERVET, INC.,

Plaintiff,

V.

MERIAL LIMITED and MERIAL SAS,

Defendants,

DR. FERNANDO ABLE OSORIO,

Interested Party.

8:07CV194

SCHEDULING ORDER

(Related Case No. 1:06-CV-00658, U.S. District Court for the District of Columbia)

This matter is before the magistrate judge on the Motion to Quash Subpoena [2] filed by Intervet Inc. and Dr. Fernando Able Osorio (together, "Intervet"). The subpoena commands Dr. Osorio to produce documents on May 21, 2007 and to appear for deposition on May 22, 2007.

Dr. Osorio is a professor employed by the University of Nebraska. The subpoena, issued by this court, was served in conjunction with *Intervet, Inc. v. Merial Limited and Merial SAS*, No. 1:06-CV-00658 (HHK-JMF), currently pending in the United States District Court for the District of Columbia (the "DC Action"). In a prior action, *Merial Limited v. Intervet, Inc.*, No. 05-CV-3168, which was filed in the Northern District of Georgia, Merial contended that Intervet's sales of a vaccine intended for swine infringed U.S. Patent No. 6,368,601 ('601 Patent). Dr. Osorio had been retained by Intervet's counsel as a consulting

expert in the Georgia case, which was dismissed on April 27, 2006 on jurisdictional grounds. Meanwhile, Intervet filed the DC Action on April 11, 2006, seeking a declaration of noninfringement, invalidity, and unenforceability of the '601 Patent. Intervet advises, in its brief, that Dr. Osorio has not yet been retained as an expert in the DC Action.

Intervet now contends the subpoena should be quashed pursuant to Federal Rules of Civil Procedure 26(b)(4)(B) and 45(c)(3), and because the subpoena seeks irrelevant information.

To facilitate the disposition of this matter,

IT IS ORDERED:

1. Compliance with the subpoena is stayed pending this court's resolution of the motion to quash.

2. Any response in opposition to the motion shall be electronically filed on or before **June 7, 2007**. Pursuant to NECivR, the moving parties may file a reply brief and index of evidence no later than five (5) business days after the non-moving parties file and serve their opposing brief.

DATED May 22, 2007.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**